

1 AN ACT in relation to health.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Mental Health Drug Open Access Authorization Act.

6 Section 5. Legislative findings; purpose.

7 (a) The General Assembly finds as follows:

8 (1) Recipients of medical assistance under the
9 Illinois Public Aid Code are often the State's most
10 disadvantaged citizens, burdened with significant
11 medical, financial, and social needs. Those recipients
12 benefit from an integrated approach to health care with
13 open and continuous access to physician-prescribed
14 medications.

15 (2) Mental health patients, including, but not
16 limited to, patients with severe mental illnesses such as
17 schizophrenia, bipolar disorder (manic-depressive
18 illness), or depression, require individually tailored
19 treatments determined by an appropriately trained health
20 care provider.

21 (3) Medications for mental illness are not the
22 same; medications can vary greatly in effectiveness in
23 treating specific symptoms or disorders or in their side
24 effects. Patient needs vary greatly, and not all patients
25 respond in the same way to a given treatment.

26 (4) There is ample evidence that new medications
27 offer therapeutic advantages over older medications when
28 used within evidence-based clinical practice.

29 (5) The determination of the most appropriate
30 medication for a particular patient with a mental illness
31 should be made on the basis of patient acceptability,

1 prior individual drug response, individual side-effect
 2 profile, and concomitant pharmacotherapies; and, finally,
 3 where multiple agents are equally documented as
 4 clinically effective, the final evaluation will be price.

5 (6) As a member of the direct caregiver team, a
 6 patient's physician should determine the most appropriate
 7 treatment that falls within the scope of evidence-based
 8 clinical practice. As a member of the direct caregiver
 9 team, a patient's pharmacist should apply the principles
 10 of pharmaceutical care to ensure patient safety relative
 11 to potential drug-drug, drug-food, and drug-preexisting
 12 medical abnormality interactions.

13 (b) The purpose of this Act is to ensure that recipients
 14 of medical assistance under the Illinois Public Aid Code, and
 15 other similarly situated patients, who need treatment for
 16 mental illness have open and continuous access to the
 17 medications deemed appropriate by their physicians and
 18 supported by evidence-based clinical practice.

19 Section 10. Definitions. In this Act:

20 "Cross-indication" means that a drug is used for a
 21 purpose generally held to be reasonable, appropriate, and
 22 within the scope of evidence-based clinical practice as set
 23 forth in peer-reviewed literature (not case reports).

24 "Department" means the following:

25 (1) In the case of the Children's Health Insurance
 26 Program under the Children's Health Insurance Program Act
 27 or the medial assistance program under the Illinois
 28 Public Aid Code: the Department of Public Aid.

29 (2) In the case of the program of pharmaceutical
 30 assistance under the Senior Citizens and Disabled Persons
 31 Property Tax Relief and Pharmaceutical Assistance Act:
 32 the Department of Revenue.

33 (3) In the case of any other State prescription

1 drug assistance program: the State agency that
2 administers that program.

3 "Mental illness" has the meaning ascribed to that term in
4 the most recent edition of the Diagnostic and Statistical
5 Manual of Mental Disorders, published by the American
6 Psychiatric Association.

7 "Prior authorization" means a procedure by which the
8 prescriber or dispenser of a drug must verify with the
9 Department or its contractor that the proposed medical use of
10 that drug for a patient meets predetermined criteria for
11 coverage under a program described in Section 15.

12 Section 15. Affected programs. This Act applies to the
13 following programs:

14 (1) The Children's Health Insurance Program under
15 the Children's Health Insurance Program Act.

16 (2) The medical assistance program under Article V
17 of the Illinois Public Aid Code, as well as medical
18 assistance provided to recipients of General Assistance
19 under Article VI of that Code.

20 (3) The program of pharmaceutical assistance under
21 the Senior Citizens and Disabled Persons Property Tax
22 Relief and Pharmaceutical Assistance Act.

23 (4) Any other State prescription drug assistance
24 program.

25 Section 20. Prior authorization of mental health drugs
26 prohibited.

27 (a) The Department may not use or require the use of a
28 prior authorization procedure in connection with the
29 dispensing of a prescription drug, or reimbursement for the
30 dispensing of a drug, that meets either of the following
31 criteria:

32 (1) According to the most recent version of AHFS

1 Drug Information, published by the American Society of
2 Health-System Pharmacists, or the Physician's Desk
3 Reference, the drug is:

4 (A) classified as an antianxiety,
5 antidepressant, or antipsychotic central nervous
6 system drug; or

7 (B) cross-indicated for a central nervous
8 system drug classification.

9 (2) The drug is prescribed for the treatment of
10 mental illness.

11 (b) Nothing in this Section precludes prior
12 authorization requirements for dosages of prescribed
13 medications that exceed the maximum dosage established by the
14 federal Food and Drug Administration where clinical safety
15 and efficacy have been established.

16 (c) Notwithstanding subdivision (a)(1)(B) of this
17 Section, even though a cross-indicated use is not included in
18 the federal Food and Drug Administration's approved label
19 indications for the drug, dosages may not exceed the maximum
20 dosage established by the Food and Drug Administration where
21 clinical safety and efficacy have been established.

22 (d) In compliance with Health Care Finance
23 Administration guidelines, a functional Drug Use Review (DUR)
24 activity shall review clinical outcomes and, based on
25 evidence-based clinical practices, intervene where clinically
26 appropriate to ensure the health and safety of the patients
27 receiving health benefits coverage under the Children's
28 Health Insurance Program Act, medical assistance under
29 Article V or VI of the Illinois Public Aid Code,
30 pharmaceutical assistance under the Senior Citizens and
31 Disabled Persons Property Tax Relief and Pharmaceutical
32 Assistance Act, or benefits under any other State
33 prescription drug assistance program.

1 Section 90. The Children's Health Insurance Program Act
2 is amended by adding Section 27 as follows:

3 (215 ILCS 106/27 new)

4 Sec. 27. Prior authorization of mental health drugs;
5 other restrictions.

6 (a) Health benefits coverage provided to eligible
7 children under this Act is subject to the Mental Health Drug
8 Open Access Authorization Act, except where the dosage of a
9 prescribed drug exceeds the maximum dosage established by the
10 federal Food and Drug Administration where safety and
11 clinical efficacy have been established.

12 (b) Nothing in this Section shall be construed to
13 prohibit the Department from implementing restrictions, other
14 than prior authorization requirements, as necessary for the
15 purpose of ensuring the appropriate use of medications by
16 program beneficiaries. Such restrictions include limitations
17 on quantity, prescribing protocols and guidelines, and other
18 restrictions that are supported by evidence-based medicine.

19 Section 93. The Illinois Public Aid Code is amended by
20 changing Sections 5-5.12 and 6-11 as follows:

21 (305 ILCS 5/5-5.12) (from Ch. 23, par. 5-5.12)

22 Sec. 5-5.12. Pharmacy payments.

23 (a) Every request submitted by a pharmacy for
24 reimbursement under this Article for prescription drugs
25 provided to a recipient of aid under this Article shall
26 include the name of the prescriber or an acceptable
27 identification number as established by the Department.

28 (b) Pharmacies providing prescription drugs under this
29 Article shall be reimbursed at a rate which shall include a
30 professional dispensing fee as determined by the Illinois
31 Department, plus the current acquisition cost of the

1 prescription drug dispensed. The Illinois Department shall
2 update its information on the acquisition costs of all
3 prescription drugs no less frequently than every 30 days.
4 However, the Illinois Department may set the rate of
5 reimbursement for the acquisition cost, by rule, at a
6 percentage of the current average wholesale acquisition cost.

7 (c) Reimbursement under this Article for prescription
8 drugs shall be limited to reimbursement for 4 brand-name
9 prescription drugs per patient per month. This subsection
10 applies only if (i) the brand-name drug was not prescribed
11 for an acute or urgent condition, (ii) the brand-name drug
12 was not prescribed for Alzheimer's disease, arthritis,
13 diabetes, HIV/AIDS, a mental health condition, or respiratory
14 disease, and (iii) a therapeutically equivalent generic
15 medication has been approved by the federal Food and Drug
16 Administration.

17 (d) The Department shall not impose requirements for
18 prior approval based on a preferred drug list for
19 anti-retroviral or any atypical antipsychotics, conventional
20 antipsychotics, or anticonvulsants used for the treatment of
21 serious mental illnesses until 30 days after it has conducted
22 a study of the impact of such requirements on patient care
23 and submitted a report to the Speaker of the House of
24 Representatives and the President of the Senate. In the case
25 of a conflict between this subsection and the Mental Health
26 Drug Open Access Authorization Act, the Mental Health Drug
27 Open Access Authorization Act controls, except where the
28 dosage of a prescribed drug exceeds the maximum dosage
29 established by the federal Food and Drug Administration where
30 safety and clinical efficacy have been established. Nothing
31 in the changes made by this amendatory Act of the 93rd
32 General Assembly shall be construed to prohibit the
33 Department from implementing restrictions, other than prior
34 authorization requirements, as necessary for the purpose of

1 ensuring the appropriate use of medications by recipients of
 2 medical assistance under this Article. Such restrictions
 3 include limitations on quantity, prescribing protocols and
 4 guidelines, and other restrictions that are supported by
 5 evidence-based medicine.

6 (Source: P.A. 92-597, eff. 6-28-02; 92-825, eff. 8-21-02;
 7 revised 9-19-02.)

8 (305 ILCS 5/6-11) (from Ch. 23, par. 6-11)
 9 Sec. 6-11. State funded General Assistance.

10 (a) Effective July 1, 1992, all State funded General
 11 Assistance and related medical benefits shall be governed by
 12 this Section. Other parts of this Code or other laws related
 13 to General Assistance shall remain in effect to the extent
 14 they do not conflict with the provisions of this Section. If
 15 any other part of this Code or other laws of this State
 16 conflict with the provisions of this Section, the provisions
 17 of this Section shall control.

18 (b) State funded General Assistance shall consist of 2
 19 separate programs. One program shall be for adults with no
 20 children and shall be known as State Transitional Assistance.
 21 The other program shall be for families with children and for
 22 pregnant women and shall be known as State Family and
 23 Children Assistance.

24 (c) (1) To be eligible for State Transitional Assistance
 25 on or after July 1, 1992, an individual must be ineligible
 26 for assistance under any other Article of this Code, must be
 27 determined chronically needy, and must be one of the
 28 following:

- 29 (A) age 18 or over or
- 30 (B) married and living with a spouse, regardless of
- 31 age.

32 (2) The Illinois Department or the local governmental
 33 unit shall determine whether individuals are chronically

1 needy as follows:

2 (A) Individuals who have applied for Supplemental
3 Security Income (SSI) and are awaiting a decision on
4 eligibility for SSI who are determined disabled by the
5 Illinois Department using the SSI standard shall be
6 considered chronically needy, except that individuals
7 whose disability is based solely on substance addictions
8 (drug abuse and alcoholism) and whose disability would
9 cease were their addictions to end shall be eligible only
10 for medical assistance and shall not be eligible for cash
11 assistance under the State Transitional Assistance
12 program.

13 (B) If an individual has been denied SSI due to a
14 finding of "not disabled" (either at the Administrative
15 Law Judge level or above, or at a lower level if that
16 determination was not appealed), the Illinois Department
17 shall adopt that finding and the individual shall not be
18 eligible for State Transitional Assistance or any related
19 medical benefits. Such an individual may not be
20 determined disabled by the Illinois Department for a
21 period of 12 months, unless the individual shows that
22 there has been a substantial change in his or her medical
23 condition or that there has been a substantial change in
24 other factors, such as age or work experience, that might
25 change the determination of disability.

26 (C) The Illinois Department, by rule, may specify
27 other categories of individuals as chronically needy;
28 nothing in this Section, however, shall be deemed to
29 require the inclusion of any specific category other than
30 as specified in paragraphs (A) and (B).

31 (3) For individuals in State Transitional Assistance,
32 medical assistance shall be provided in an amount and nature
33 determined by the Illinois Department of Public Aid by rule.
34 The amount and nature of medical assistance provided need not

1 be the same as that provided under paragraph (4) of
2 subsection (d) of this Section, and nothing in this paragraph
3 (3) shall be construed to require the coverage of any
4 particular medical service. In addition, the amount and
5 nature of medical assistance provided may be different for
6 different categories of individuals determined chronically
7 needy.

8 (4) The Illinois Department shall determine, by rule,
9 those assistance recipients under Article VI who shall be
10 subject to employment, training, or education programs
11 including Earnfare, the content of those programs, and the
12 penalties for failure to cooperate in those programs.

13 (5) The Illinois Department shall, by rule, establish
14 further eligibility requirements, including but not limited
15 to residence, need, and the level of payments.

16 (d) (1) To be eligible for State Family and Children
17 Assistance, a family unit must be ineligible for assistance
18 under any other Article of this Code and must contain a child
19 who is:

20 (A) under age 18 or

21 (B) age 18 and a full-time student in a secondary
22 school or the equivalent level of vocational or technical
23 training, and who may reasonably be expected to complete
24 the program before reaching age 19.

25 Those children shall be eligible for State Family and
26 Children Assistance.

27 (2) The natural or adoptive parents of the child living
28 in the same household may be eligible for State Family and
29 Children Assistance.

30 (3) A pregnant woman whose pregnancy has been verified
31 shall be eligible for income maintenance assistance under the
32 State Family and Children Assistance program.

33 (4) The amount and nature of medical assistance provided
34 under the State Family and Children Assistance program shall

1 be determined by the Illinois Department of Public Aid by
2 rule. The amount and nature of medical assistance provided
3 need not be the same as that provided under paragraph (3) of
4 subsection (c) of this Section, and nothing in this paragraph
5 (4) shall be construed to require the coverage of any
6 particular medical service.

7 (5) The Illinois Department shall, by rule, establish
8 further eligibility requirements, including but not limited
9 to residence, need, and the level of payments.

10 (d-5) Medical assistance benefits provided to eligible
11 recipients under this Section are subject to the Mental
12 Health Drug Open Access Authorization Act. Nothing in this
13 subsection shall be construed to prohibit the Department of
14 Public Aid from implementing restrictions, other than prior
15 authorization requirements, as necessary for the purpose of
16 ensuring the appropriate use of medications by recipients of
17 medical assistance under this Section. Such restrictions
18 include limitations on quantity, prescribing protocols and
19 guidelines, and other restrictions that are supported by
20 evidence-based medicine.

21 (e) A local governmental unit that chooses to
22 participate in a General Assistance program under this
23 Section shall provide funding in accordance with Section
24 12-21.13 of this Act. Local governmental funds used to
25 qualify for State funding may only be expended for clients
26 eligible for assistance under this Section 6-11 and related
27 administrative expenses.

28 (f) In order to qualify for State funding under this
29 Section, a local governmental unit shall be subject to the
30 supervision and the rules and regulations of the Illinois
31 Department.

32 (g) Notwithstanding any other provision in this Code,
33 the Illinois Department is authorized to reduce payment
34 levels used to determine cash grants provided to recipients

1 of State Transitional Assistance at any time within a Fiscal
2 Year in order to ensure that cash benefits for State
3 Transitional Assistance do not exceed the amounts
4 appropriated for those cash benefits. Changes in payment
5 levels may be accomplished by emergency rule under Section
6 5-45 of the Illinois Administrative Procedure Act, except
7 that the limitation on the number of emergency rules that may
8 be adopted in a 24-month period shall not apply and the
9 provisions of Sections 5-115 and 5-125 of the Illinois
10 Administrative Procedure Act shall not apply. This provision
11 shall also be applicable to any reduction in payment levels
12 made upon implementation of this amendatory Act of 1995.

13 (Source: P.A. 92-111, eff. 1-1-02.)

14 Section 95. The Senior Citizens and Disabled Persons
15 Property Tax Relief and Pharmaceutical Assistance Act is
16 amended by changing Section 4 as follows:

17 (320 ILCS 25/4) (from Ch. 67 1/2, par. 404)

18 Sec. 4. Amount of Grant.

19 (a) In general. Any individual 65 years or older or any
20 individual who will become 65 years old during the calendar
21 year in which a claim is filed, and any surviving spouse of
22 such a claimant, who at the time of death received or was
23 entitled to receive a grant pursuant to this Section, which
24 surviving spouse will become 65 years of age within the 24
25 months immediately following the death of such claimant and
26 which surviving spouse but for his or her age is otherwise
27 qualified to receive a grant pursuant to this Section, and
28 any disabled person whose annual household income is less
29 than \$14,000 for grant years before the 1998 grant year, less
30 than \$16,000 for the 1998 and 1999 grant years, and less than
31 (i) \$21,218 for a household containing one person, (ii)
32 \$28,480 for a household containing 2 persons, or (iii)

1 \$35,740 for a household containing 3 or more persons for the
2 2000 grant year and thereafter and whose household is liable
3 for payment of property taxes accrued or has paid rent
4 constituting property taxes accrued and is domiciled in this
5 State at the time he or she files his or her claim is
6 entitled to claim a grant under this Act. With respect to
7 claims filed by individuals who will become 65 years old
8 during the calendar year in which a claim is filed, the
9 amount of any grant to which that household is entitled shall
10 be an amount equal to 1/12 of the amount to which the
11 claimant would otherwise be entitled as provided in this
12 Section, multiplied by the number of months in which the
13 claimant was 65 in the calendar year in which the claim is
14 filed.

15 (b) Limitation. Except as otherwise provided in
16 subsections (a) and (f) of this Section, the maximum amount
17 of grant which a claimant is entitled to claim is the amount
18 by which the property taxes accrued which were paid or
19 payable during the last preceding tax year or rent
20 constituting property taxes accrued upon the claimant's
21 residence for the last preceding taxable year exceeds 3 1/2%
22 of the claimant's household income for that year but in no
23 event is the grant to exceed (i) \$700 less 4.5% of household
24 income for that year for those with a household income of
25 \$14,000 or less or (ii) \$70 if household income for that year
26 is more than \$14,000.

27 (c) Public aid recipients. If household income in one
28 or more months during a year includes cash assistance in
29 excess of \$55 per month from the Department of Public Aid or
30 the Department of Human Services (acting as successor to the
31 Department of Public Aid under the Department of Human
32 Services Act) which was determined under regulations of that
33 Department on a measure of need that included an allowance
34 for actual rent or property taxes paid by the recipient of

1 that assistance, the amount of grant to which that household
2 is entitled, except as otherwise provided in subsection (a),
3 shall be the product of (1) the maximum amount computed as
4 specified in subsection (b) of this Section and (2) the ratio
5 of the number of months in which household income did not
6 include such cash assistance over \$55 to the number twelve.
7 If household income did not include such cash assistance over
8 \$55 for any months during the year, the amount of the grant
9 to which the household is entitled shall be the maximum
10 amount computed as specified in subsection (b) of this
11 Section. For purposes of this paragraph (c), "cash
12 assistance" does not include any amount received under the
13 federal Supplemental Security Income (SSI) program.

14 (d) Joint ownership. If title to the residence is held
15 jointly by the claimant with a person who is not a member of
16 his or her household, the amount of property taxes accrued
17 used in computing the amount of grant to which he or she is
18 entitled shall be the same percentage of property taxes
19 accrued as is the percentage of ownership held by the
20 claimant in the residence.

21 (e) More than one residence. If a claimant has occupied
22 more than one residence in the taxable year, he or she may
23 claim only one residence for any part of a month. In the
24 case of property taxes accrued, he or she shall prorate $1/12$
25 of the total property taxes accrued on his or her residence
26 to each month that he or she owned and occupied that
27 residence; and, in the case of rent constituting property
28 taxes accrued, shall prorate each month's rent payments to
29 the residence actually occupied during that month.

30 (f) There is hereby established a program of
31 pharmaceutical assistance to the aged and disabled which
32 shall be administered by the Department in accordance with
33 this Act, to consist of payments to authorized pharmacies, on
34 behalf of beneficiaries of the program, for the reasonable

1 costs of covered prescription drugs. Each beneficiary who
2 pays \$5 for an identification card shall pay no additional
3 prescription costs. Each beneficiary who pays \$25 for an
4 identification card shall pay \$3 per prescription. In
5 addition, after a beneficiary receives \$2,000 in benefits
6 during a State fiscal year, that beneficiary shall also be
7 charged 20% of the cost of each prescription for which
8 payments are made by the program during the remainder of the
9 fiscal year. To become a beneficiary under this program a
10 person must: (1) be (i) 65 years of age or older, or (ii) the
11 surviving spouse of such a claimant, who at the time of death
12 received or was entitled to receive benefits pursuant to this
13 subsection, which surviving spouse will become 65 years of
14 age within the 24 months immediately following the death of
15 such claimant and which surviving spouse but for his or her
16 age is otherwise qualified to receive benefits pursuant to
17 this subsection, or (iii) disabled, and (2) be domiciled in
18 this State at the time he or she files his or her claim, and
19 (3) have a maximum household income of less than \$14,000 for
20 grant years before the 1998 grant year, less than \$16,000 for
21 the 1998 and 1999 grant years, and less than (i) \$21,218 for
22 a household containing one person, (ii) \$28,480 for a
23 household containing 2 persons, or (iii) \$35,740 for a
24 household containing 3 more persons for the 2000 grant year
25 and thereafter. In addition, each eligible person must (1)
26 obtain an identification card from the Department, (2) at the
27 time the card is obtained, sign a statement assigning to the
28 State of Illinois benefits which may be otherwise claimed
29 under any private insurance plans, and (3) present the
30 identification card to the dispensing pharmacist.

31 Whenever a generic equivalent for a covered prescription
32 drug is available, the Department shall reimburse only for
33 the reasonable costs of the generic equivalent, less the
34 co-pay established in this Section, unless (i) the covered

1 prescription drug contains one or more ingredients defined as
2 a narrow therapeutic index drug at 21 CFR 320.33, (ii) the
3 prescriber indicates on the face of the prescription "brand
4 medically necessary", and (iii) the prescriber specifies that
5 a substitution is not permitted. When issuing an oral
6 prescription for covered prescription medication described in
7 item (i) of this paragraph, the prescriber shall stipulate
8 "brand medically necessary" and that a substitution is not
9 permitted. If the covered prescription drug and its
10 authorizing prescription do not meet the criteria listed
11 above, the beneficiary may purchase the non-generic
12 equivalent of the covered prescription drug by paying the
13 difference between the generic cost and the non-generic cost
14 plus the beneficiary co-pay.

15 Pharmaceutical assistance benefits provided to eligible
16 persons under this Act are subject to the Mental Health Drug
17 Open Access Authorization Act. Nothing in the changes made
18 by this amendatory Act of the 93rd General Assembly shall be
19 construed to prohibit the Department of Revenue from
20 implementing restrictions, other than prior authorization
21 requirements, as necessary for the purpose of ensuring the
22 appropriate use of medications by recipients of
23 pharmaceutical assistance under this Act. Such restrictions
24 include limitations on quantity, prescribing protocols and
25 guidelines, and other restrictions that are supported by
26 evidence-based medicine.

27 Any person otherwise eligible for pharmaceutical
28 assistance under this Act whose covered drugs are covered by
29 any public program for assistance in purchasing any covered
30 prescription drugs shall be ineligible for assistance under
31 this Act to the extent such costs are covered by such other
32 plan.

33 The fee to be charged by the Department for the
34 identification card shall be equal to \$5 per coverage year

1 for persons below the official poverty line as defined by the
2 United States Department of Health and Human Services and \$25
3 per coverage year for all other persons.

4 In the event that 2 or more persons are eligible for any
5 benefit under this Act, and are members of the same
6 household, (1) each such person shall be entitled to
7 participate in the pharmaceutical assistance program,
8 provided that he or she meets all other requirements imposed
9 by this subsection and (2) each participating household
10 member contributes the fee required for that person by the
11 preceding paragraph for the purpose of obtaining an
12 identification card.

13 (Source: P.A. 91-357, eff. 7-29-99; 91-699, eff. 1-1-01;
14 92-131, eff. 7-23-01; 92-519, eff. 1-1-02; 92-651, eff.
15 7-11-02.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.